TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 58.

ATLANTIC COAST LINE RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

B. MAZURSKY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

FILED JANUARY 22, 1908.

(20,982.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 254.

ATLANTIC COAST LINE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

B. MAZURSKY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

INDEX.

	Original.	Print.
Record from court of magistrate	1	1
Summons on complaint	1	1
Answer	2	1
Affidavit of B. Mazursky	3	2
Judgment	4	3
Notice of appeal	4	3
Record from court of common pleas	5	4
Judgment	5	4
Notice of appeal	7	5
Statement	7	5
Exceptions and grounds of appeal	7	6
Opinion	9	7
Writ of error	10	7
Citation and service	13	9
Assignment of errors	15	10
Bond on writ of error	18	11
Clerk's certificate	21	12

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 5, 1909.

1 THE STATE OF SOUTH CAROLINA:

Second Circuit, Barnwell County.

In the Supreme Court, April Term, 1907.

In the Court of Magistrate C. W. Moody.

B. MAZURSKY, Plaintiff,
against
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

To the Atlantic Coast Line Railroad Company, a corporation duly chartered according to law:

Whereas, complaint has been made unto me by B. Mazursky that on the — day of September, A. D. 1905, you lost in transit over your line of road one box of collars of the value of $1.10, the same having been shipped to the said B. Mazursky from Albany, N. Y., and that the rest of the shipment that the said box of collars was enclosed and consigned with arrived at your depot in Barnwell, and that the said collars did not arrive, they having been shipped with the other goods, and that on the 18th day of September A. D. 1905, he filed with you a claim, for the loss of said collars, and that you failed to pay the same within ninety days after the filing of said claim, and that by reason of your failure to pay the same he is entitled to a penalty of $50 under the law in such case made and provided, in addition to his actual damage.

These are, therefore, to require you to be and appear before me in my office in Barnwell, S. C., on the 21st day from the service hereof, exclusive of the day of service, at ten o'clock a. m., to answer

2 to said complaint, or in default thereof and upon proof of the plaintiff's case, judgment will be given against you by default by fifty one and 10/100 Dollars and costs.

Given under my hand and seal this 8th day of May, A. D. 1906.

C. W. MOODY, [L. S.]
Magistrate for Barnwell Co.

DAVIS & BEST,
Pl'ff's Att'ys.

STATE OF SOUTH CAROLINA,
Barnwell County:

In the Court of Magistrate C. W. Moody.

B. MAZURSKY, Pl'ff,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

The Defendant, Atlantic Coast Line Railroad Company, by Robert Aldrich and J. T. Barron, Esqrs., its Attorneys answering the Complaint herein:

For a First Defense.

Denies each and every allegation in the said Complaint contained.

For a Second Defense.

1. Alleges that the said Defendant, Atlantic Coast Line Railroad Company, is a corporation duly organized and chartered under and by the laws of the State of Virginia, and operates a Railway between the city of Washington, in the District of Columbia, and the city of Jacksonville in the State of Florida, and is engaged in Inter-state Commerce between these points and through the States of Virginia, North Carolina, South Carolina, Georgia and Florida, and the city of Augusta in the State of Georgia, and the city of Wilmington in the State of North Carolina.

2. That the law under which the penalty of fifty ($50) Dollars is claimed as set forth in the Complaint, to wit, the Act of the General Assembly of said State, No. 50 in volume 24, P. 81 of
3 the Statutes at large of said State of South Carolina, entitled "An Act to regulate the manner in which common carriers doing business in this State shall adjust freight charges and claims for loss of or damage to freight" is unconstitutional, null and void, in this that it attempts to regulate, interfere with and to impose a burden upon Interstate Commerce a subject which, under the Constitution and laws of the United States in devolved solely upon the Congress of the United States. Sec. 8, Art. 1.

Wherefore the Defendant demands judgment that the said Complaint be dismissed with costs.

ROBERT ALDRICH,
Defendant's Attorney.

IN THE STATE OF SOUTH CAROLINA,
County of Barnwell:

In the Court of Magistrate (C. W. Moody).

B. MAZURSKY, Plaintiff,
against
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Messrs. Davis & Best, attorneys for the plaintiff; Rob't Aldrich for the defendant.

B. Mazursky, being duly sworn, deposes and says, that on the — day of September, A. D. 1905, he had consigned to him from Albany, N. Y. to Barnwell, S. C., one box of collars of the value of $1.10, via Atlantic Coast Line Railroad Company; that the rest of the Shipment except said box of collars arrived at the depot of the Atlantic Coast Line Railroad at Barnwell, S. C. on the — day of September, 1905, that on the 18th day of September, A. D. 1905, deponent filed with the Agent of the Atlantic Coast Line Railroad Company, at its depot in Barnwell, S. C., a claim for said loss of said

collars, with bill of lading, freight bill and invoice attached, for the sum of $1.10, that more than ninety days have elapsed and the said Atlantic Coast Line Railroad Company has failed to pay said claim; that after the commencement of this action which was over five months after the filing of said claim, Atlantic Coast Line Railroad Company agreed to pay said claim of $1.10, but refused to pay
4 the penalty of $50.

B. MAZURSKY.

Sworn to before me this 7th day of July, A. D. 1906.
C. W. MOODY, [L. S.]
Magistrate.

I find for the Plaintiff fifty one 10-100 dollars.
C. W. MOODY,
Magistrate.

7th July, 1906.

STATE OF SOUTH CAROLINA,
Barnwell County:

In the Court of Magistrate C. W. Moody.

B. MAZURSKY, Plaintiff,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Notice of Appeal.

To Messrs. Davis & Best, plaintiff's attorneys, and C. W. Moody, magistrate:

Please take notice that the Defendant above named intends to appeal from the Judgment entered herein on the 7th July 1906 to the Circuit Court, and upon the hearing thereof will move the said Court to reverse the same upon the following Exceptions and Grounds of Appeal, to wit:

1. That the Magistrate erred in law in refusing to dismiss the Summons and Complaint upon the grounds stated in Defendant's answer as follows:

1. Alleges that the said Defendant, Atlantic Coast Line Rail Road Company, is a corporation duly organized and chartered under and by the laws of the State of Virginia, and operates a Railway between the city of Washington, in the District of Columbia, and the city of Jacksonville in the State of Florida, and the city of Augusta in the State of Georgia and the city of Wilmington in the State of North Carolina, and is engaged in Inter State Commerce between these points and through the States of Virginia, North Carolina, South Carolina, Georgia and Florida.

2. That the law under which the penalty of fifty ($50)
5 dollars is claimed, as set forth in the Complaint, to wit, the Act of the General Assembly of said State, No. 50 in Volume

24, P. 81 of the Statutes at large of said State of South Carolina entitled "An Act to regulate the manner in which common carriers doing business in this State shall adjust freight charges and claims for loss of or damage to freight" is unconstitutional, null and void in this that it attempts to regulate, interfere with and to impose a burden upon Inter-State Commerce, a subject which, under the Constitution and laws of the United States is devolved solely upon the Congress of the United States, Sec. 8, Art. 1, and in overruling said defense.

ROBT ALDRICH.
Defendant's Attorney.

7th July, 1906.

STATE OF SOUTH CAROLINA,
County of Barnwell:

Court of Common Pleas.

B. MAZURSKY, Plaintiff-Respondent,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant-Appellant.

Six Cases.

These six cases came before this Court on appeal from the Court of Magistrate C. W. Moody, and were heard together by consent and raise a single question, namely: The Constitutionality of the Act of the Legislature of South Carolina, being the Act of 1903, No. 50, Vol. 24, page 81, entitled "An act to regulate the manner in which common carriers doing business in this State shall adjust freight charges and claims for loss or damage to freight. Section Two of which is as follows:

SEC. 2. That every claim for loss or damage to property while in the possession of such common carrier shall be adjusted and paid within forty days, in case of shipments wholly within this State, and within ninety days, in case of shipments without this State, after the filing of such claim with the Agent of such carrier at the
6 point of destination of such shipment: *Provided*, That no such claim shall be filed until after the arrival of the shipment or some part thereof at the point of destination, or until after the lapse of a reasonable time for the arrival thereof. In every case such common carrier shall be liable for the amount of such loss or damage, together with interest thereon from the date of the filing of the claim therefor until the payment thereof. Failure to adjust and pay such claim within the periods herein prescribed shall subject each carrier so failing to a penalty of Fifty Dollars for each and every such failure, to be recovered by any consignee or consignees aggrieved in any Court of Competent jurisdiction: *Provided*, That unless such consignee or consignees recover in such action the full amount claimed, no penalty shall be recovered, but only the actual amount of the loss or damage, with interest as aforesaid: *Provided, further*, That no common carrier shall be liable under this Act for

property which never came into its possession, if it complies with the provisions of Section 1710, Vol. 1 of the Code of Laws of South Carolina, 1902.

It is contended that this Act violated Section 8 of Article 1 of the Constitution of the United States, in this that it is an attempt to regulate commerce between the State and places an onerous and unjust burden upon Inter-state Commerce.

After hearing Robert Aldrich, Esq., defendant's Attorney for the Appellant and Messrs. Davis & Best, Plaintiff's Attorneys for the Respondent,

It is adjudged that the judgments of the Magistrate's Court be affirmed and the Appeals be dismissed.

GEO. W. GAGE,
Presiding Judge.

7 Dec. 1906.

STATE OF SOUTH CAROLINA,
Barnwell County:

In the Court of Common Pleas.

B. MAZURSKY, Plaintiff,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

7 *Notice of Appeal, Six Cases.*

To Messrs. Davis & Best, plaintiff's attorneys:

Please take notice that the Defendant above named intends to appeal from the Judgment entered herein to the Supreme Court, and upon the hearing thereof will move the said Court to reverse the same upon Exceptions and Grounds of Appeal hereafter to be served upon you.

ROBT ALDRICH,
Defendant's Attorney.

17 December, 1906.

STATE OF SOUTH CAROLINA,
Barnwell County:

In the Supreme Court.

B. MAZURSKY, Plaintiff, Respondent,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant, Appellant

Statement.

Six cases tried together in Magistrate Court at Barnwell, South Carolina, on the 7th day of July A. D. 1905. Judgment for plaintiff in each case; defendant appealed to Circuit Court, and at November term, A. D. 1906, the appeal was heard and dismissed, and the

judgment of the Magistrate Court affirmed, from which the defendant appeals.

It is agreed that the record in one case be taken up, the appeal heard upon that, and the decision to control in all six cases.

To Messrs. Davis & Best, plaintiff's attorneys:

Please take notice, that the Defendant-Appellant herein proposes the following as and for the case upon which the appeal to the Supreme Court is to be heard.

Exceptions and Grounds of Appeal.

I. That his Honor, the Presiding Judge, erred in law in sustaining the Magistrate in over ruling the defendant's defense as follows:

I. That the Magistrate erred in law in refusing to dismiss
8 the Summons and complaint upon the grounds stated in Defendant's second defense as follows:

1. Alleges that the said defendant, Atlantic Coast Line Railroad Company, is a corporation duly organized and chartered under and by the laws of the State of Virginia, and operates a Railway between the City of Washington, in the District of Columbia, and the City of Jacksonville, in the State of Florida, and is engaged in Inter-State Commerce between these points and through the States of Virginia, North Carolina, South Carolina, Georgia and Florida.

II. That the law under which the penalty of Fifty ($50) Dollars is claimed, as set forth in the complaint, to wit: The Act of the General Assembly of said State, No. 50, in Volume 24, P. 81, of the Statutes at large of said State of South Carolina, entitled "An Act to regulate the manner in which common carriers doing business in this State shall adjust freight charges and claims for loss of or damage to freight is unconstitutional, null and void in this, that it attempt- to regulate, interfere with and to impose a burden upon Inter-State Commerce, a subject which, under the Constitution and laws of the United States is devolved solely upon the Congress of the United States. Sec. 8, Art. 1, and in overruling said defense, "Whereas, his Honor, the Presiding Judge, should have sustained said defense, and held that said Act of the Legislature of South Carolina, is unconstitutional, null and void upon the grounds stated.

II. That said judgment is otherwise contrary to law.

Respectfully submitted,

ROBT ALDRICH,
Defendant's Attorney.

We agree that the appeal be heard upon the foregoing case.

ROBT ALDRICH,
Defendant's Attorney.
DAVIS & BEST,
Plaintiff's Attorneys.

A true copy.
U. R. BROOKS,
Clerk Sup. Ct. S. C.

[Seal Supreme Court of South Carolina.]

9 STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1907, Second Circuit, Barnwell County.

B. MAZURSKY, Plaintiff-Respondent,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant-Appellant.

Opinion by Ira B. Jones, A. J.

This appeal is from a judgment of the Circuit Court affirming a judgment of the Magistrate in favor of plaintiff against defendant for $1.10, the value of a box of collars lost while in the possession of defendant carrier for transportation from Albany, N. Y., to Barnwell, S. C., and for fifty dollars penalty for failure to adjust the loss within the time required by the act of 1903, 24 Stat., 81.

The exceptions assail the statute as in violation of the interstate commerce clause of the Federal Constitution, but they must be overruled under the authority of Charles *vs.* A. C. L. R. R. Co. and other cases decided at this term.

The judgment of the Circuit Court is affirmed.

A true copy.

U. R. BROOKS,
Clerk Sup. Ct. S. C.

[Seal Supreme Court of South Carolina.]

[Endorsed:] Remittitur. Mazursky *v.* A. C. L. R. R. Co.

10 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between B. Mazursky, plaintiff, and Atlantic Coast Line Railroad Company, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute

of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the constitution, or of a treaty or statute or commission: a manifest error hath happened to the great damage of the said defendant, Atlantic Coast Line Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the
11 United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid be inspected, the said Supreme Court may further cause to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 14th day of November, in the year of our Lord one thousand nine hundred and seven.

[Seal U. S. Circuit Court, District of So. Carolina.]

C. J. MURPHY,
Clerk of the Circuit Court of the United States for the District of South Carolina.

Allowed to operate as a supersedeas:
Y. J. POPE,
Chief Justice of the Supreme Court of the State of South Carolina.

12 [Endorsed:] United States of America. A. C. L. R. R. Co., Plaintiff in Error, *vs.* B. Mazursky, Defendant in Error. Writ of Error. Original. Writ Book #4, Page 330, Nov. 25th, 1907. Frank H. Creech, S. B. C.

[Endorsed.]

STATE OF SOUTH CAROLINA,
Barnwell County:

Before me personally appeared Frank H. Creech, Esq., Sheriff of said County, who being duly sworn deposes and says that he served the within Writ of Error upon the defendant B. Mazursky on the 25 day of November *Inst.* at his store or place of business in the town of Barnwell said State by delivering to him personally and leaving with him a copy of the same.

FRANK H. CREECH, *S. B. C.*

Sworn to before me this 25 day of November, A. D. 1907.
F. O. BRABHAM, [L. S.]
Magistrate B. Co.

[Endorsed:] Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 5 Dec., 1907. U. R. Brooks, Clerk.

13 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To B. Mazursky, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of South Carolina wherein Atlantic Coast Line Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Y. J. Pope, Chief Justice of the Supreme Court of the State of South Carolina, this fourteenth day of November, in the year of our Lord one thousand nine hundred and seven.

Y. J. POPE.
Chief Justice of the Supreme Court of the State of South Carolina.

14 [Endorsed.] United States of America. A. C. L. R. R. Co., Plaintiff in Error, *vs.* B. Mazursky, Defendant in Error. Citation. Original. Writ Book #4, Page 330, Nov. 25th, 1907. Franck H. Creech, S. B. C.

[Endorsed.]

STATE OF SOUTH CAROLINA,
Barnwell County:

Before me personally appeared Frank H. Creech, Esqr., Sheriff of Barnwell County, who being duly sworn deposes and says that he served the within citation upon the defendant B. Mazursky on the 25 day of November *Inst.* at his store or place of business in the town of Barnwell said State, by delivering to him personally and leaving with him a copy of the same.

FRANK H. CREECH, *S. B. C.*

Sworn to before me this 25 day of November, A. D. 1907.

F. O. BRABHAM. [L. S.]
Magistrate B. Co.

[Endorsed:] Supreme Court of South Carolina. Clerk's Office, Columbia, S. C. Filed 5 Dec., 1907. U. R. Brooks, Clerk.

15 In the Supreme Court of the United States, October Term, 1907.

ATLANTIC COAST LINE RAILROAD COMPANY, Plaintiff in Error,
against
B. MAZURSKY, Defendant in Error.

Assignments of Error.

Now comes the Atlantic Coast Line Railroad Company, Plaintiff in error, and respectfully represents that it feels aggrieved by the proceedings and judgment of the Supreme Court of the State of South Carolina in the above entitled cause, and in connection with its petition for writ of error herein makes the following assignments of error, to-wit:

I.

That the said Supreme Court of South Carolina in its final judgment rendered in said cause erred in holding that the Act of the General Assembly of the State of South Carolina, approved the 23rd day of February, 1903, (24 Stat. at L. p. 81), entitled "An Act to Regulate the Manner in Which Common Carriers Doing Business in this State shall Adjust Freight Charges and Claims for Loss of or Damage to Freight," which imposes a penalty of Fifty Dollars for failure to adjust and pay, within ninety days after filing, a claim for loss of or damage to freight coming from without the State, so far as it affects carriers doing business in the State of South Carolina who fail or refuse to adjust and pay the loss of or damage to goods either proved or *presumed* to have come into their possession, is not an unlawful interference with interstate
16 commerce, even as applied to an interstate shipment; whereas said Court should have held that said Act was an illegal regulation of and burden upon interstate commerce in violation of Article I, Section 8, Clause 3, of the Constitution of the United States.

Wherefore, the said Atlantic Coast Line Railroad Company, Plaintiff in Error, prays that the said judgment of the said Supreme Court of the State of South Carolina be reversed, and that the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WILLCOX & WILLCOX,
HENRY E. DAVIS,
Attorneys for Plaintiff in Error.

17 [Endorsed:] In the Supreme Court of the United States, October Term, 1907. Atlantic Coast Line Railroad Company, Plaintiff in Error, *vs.* B. Mazursky, Defendant in Error. Assignments of Error. Original.

18 Know all men by these presents, That we, Atlantic Coast Line Railroad Company, as principal, and The Title Surety and Guaranty Co., as sureties, are held and firmly bound unto B. Mazursky in the full and just sum of Four Hundred Dollars, to be paid to the said B. Mazursky, his certain attorneys, executors, administrators, heirs or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 18th day of November, in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at a term of the Supreme Court of the State of South Carolina in a suit depending in said Court between B. Mazursky and the Atlantic Coast Line Railroad Company a judgment was rendered against the said Atlantic Coast Line Railroad Company and the said Atlantic Coast Line Railroad Company having obtained a writ of error and filed a copy thereof in the Clerk's office of said Court to reverse the judgment in the aforesaid suit, and a citation directed to B. Mazursky citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Atlantic Coast Line Railroad Company shall prosecute its writ of error to effect, and answer all damages and costs if it fail

19 to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

ATLANTIC COAST LINE RAILROAD COMPANY.

[SEAL.] By J. R. KENLY, *Third Vice-President.*

Attest:
W. R. SULLIVAN,
Ass't Sec'y.

THE TITLE SURETY & GUARANTY CO.,

[SEAL.] By CHAS. E. COMMANDER, *Att'y-in-fact.*

Attest:
M. M. MANN.

Approved:
Y. J. POPE,
Chief Justice of the Supreme Court of the State of South Carolina.

[Seal Supreme Court of South Carolina.]

A true copy.
C. R. BROOKS,
Clerk Sup. Ct. S. C.

20 [Endorsed:] Atlantic Coast Line Railroad Co., Plaintiff-in-Error, *vs.* B. Mazursky, Defendant-in-Error. Bond. Copy for the Supreme Court of the United States.

21 STATE OF SOUTH CAROLINA:

In the Supreme Court.

ATLANTIC COAST LINE RAILROAD COMPANY, Plaintiff in Error,
vs.
B. MAZURSKY, Defendant in Error.

Return to Writ of Error.

I, U. R. Brooks, Clerk of the Supreme Court of the State of South Carolina, by way of return to the Writ of Error directed to said Court by the Supreme Court of the United States in the above entitled cause, herewith transmit under my hand and seal a true copy of the record and of the assignment of errors and of all proceedings in the case, together with true copies of all opinions filed in the case, and I hereby certify that the record herewith transmitted is complete, containing in itself and not by reference all the papers, exhibits, depositions and other proceedings necessary to the hearing of said case in the Supreme Court of the United States.

Witness my hand and the seal of the Supreme Court of the State of South Carolina this 16th day of December, 1907.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk of the Supreme Court of South Carolina.

Endorsed on cover: File No. 20,982. South Carolina Supreme Court. Term No. 254. Atlantic Coast Line Railroad Company, plaintiff in error, *vs.* B. Mazursky. Filed January 22, 1908. File No. 20,982.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. [redacted].59.

SOUTHERN EXPRESS COMPANY, PLAINTIFF IN ERROR,

vs.

E. E. McTEER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

FILED JANUARY 22, 1908.

(20,983.)

(20,983.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 255.

SOUTHERN EXPRESS COMPANY, PLAINTIFF IN ERROR,

vs.

E. E. McTEER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

INDEX.

	Original.	Print.
Caption	1	1
Proceedings in magistrate's court	1	1
Complaint and summons	1	1
Report of magistrate	2	2
Proceedings in common pleas	3	2
Assignment of errors	3	2
Judgment	4	3
Notice of intention to appeal	5	3
Assignment of errors	5	4
Clerk's certificate	6	4
Opinion	7	5
Writ of error	8	5
Citation and service	11	7
Assignment of errors	13	8
Bond on writ of error	16	9
Clerk's certificate and return to writ of error	19	10

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 11, 1909.

1 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, Second Circuit, Hampton County.

E. E. McTEER, Plaintiff,

vs.

SOUTHERN EXPRESS CO., Defendant.

In Magistrate's Court.

The plaintiff above named, complaining of the above named defendant, shows to the Court:

First. That the defendant above named is and was at the time hereinafter mentioned, a corporation created by and under the laws of the State of Virginia (and if not in the State, then in some State unknown to this plaintiff), and doing business as a common carrier in Hampton County, South Carolina, and beyond with an office at Early Branch, South Carolina, in said County.

Second. That on or about October 7th, 1905, the plaintiff herein ordered from the Walton Company, Covington, Kentucky, one gallon of whiskey, which was to be and was shipped by the party from the said point to plaintiff herein in a box or case, which contained five bottles of whiskey, and plaintiff herein paid for same, the cash accompanying the said order. That on October the 12th, 1905, the plaintiff herein received from the defendant at Early Branch, South Carolina, the point of destination of said shipment, a box or case containing the whiskey so ordered, but two of the bottles of the said whiskey were broken and was a total loss of the said two bottles to plaintiff.

2 Third. That the said loss occurred while the said shipment was in possession of the said defendant, the said whiskey has been delivered to the defendant and received by defendant for transportation from Covington, Kentucky, to Early Branch, South Carolina.

Fourth. That the value of the whiskey so lost *and* plaintiff as herein alleged is one and 20-100 dollars.

Fifth. That the plaintiff herein filed with the agent of the defendant at Early Branch, South Carolina, a claim for same against the defendant for the sum of one and 20-100 dollars more than ninety days ago, and the defendant herein has utterly failed to adjust and pay the said claim due this the said ninety days ago, as provided by law, and the said defendant is due this plaintiff the sum of fifty dollars for its failure to adjust and pay the said claim as allowed by law, and is due the plaintiff the further sum of one and 20-100 dollars, as herein set out.

These are, therefore, to require you, any lawful constable, to summon the defendant to appear before me at my office, in Hampton, South Carolina, on the 7th day of August, 1906, at 10 o'clock

A. M., to answer to the said complaint, or judgment will be given against you by default.

Given under my hand and seal at Hampton, South Carolina, 14th day of July, 1906.

[SEAL.] J. B. BINNICKER,
Magistrate.

SOUTH CAROLINA,
County of Hampton:

E. E. McTEER, Plaintiff,
vs.
SOUTHERN EXPRESS CO., Defendant.

Report.

The above entitled case came up for hearing before me upon the agreed statement of facts. Defendant not denying amount
3 involved, but submitting certain legal propositions involving the constitutionality of the Act of the Legislature herein involved, and a question of interstate commerce.

I found for the plaintiff, and allowed and entered judgment for the full amount asked for by plaintiff, to wit: fifty-one dollars and twenty cents, and costs of this action.

Respectfully submitted.

[L. S.] J. B. BINNICKER,
Magistrate.

Hampton, S. C., October 2d, 1906.

SOUTH CAROLINA,
Hampton County:

In Common Pleas.

E. E. McTEER, Plaintiff,
vs.
SOUTHERN EXPRESS CO., Defendant.

To W. B. De Loach, Esq., plaintiff's attorney, and J. B. Binnicker, Magistrate herein:

Take notice that the defendant appeals from the decision of Magistrate J. B. Binnicker herein, and the judgment thereon, to the next term of the Circuit Court for Hampton County, S. C.

I. Because the Magistrate erred in not deciding that the Act of the Legislature of South Carolina, under which this action is brought, is unconstitutional, and in violation of the fourteenth amendment of the Constitution of the United States.

II. Because the Magistrate erred in not deciding that the Act of the Legislature of South Carolina, under which this suit is brought, is in violation of the Constitution of South Carolina, because it contains two subject matters.

III. Because the Magistrate erred in not deciding that the Act of the Legislature of South Carolina, under which this action is commenced and sought to be maintained, is in violation of
4 the interstate commerce clause of the Constitution of the United States, as well as in violation of the fourteenth amendment of the Constitution of the United States.

IV. Because the Magistrate erred in deciding that the plaintiff was entitled to recover of the defendant the sum of fifty dollars as penalty under the Act of the Legislature of the State. Whereon he should have held that the said Act was in violation of the Constitution of South Carolina, the said Act containing two subject matters, and was also in violation of the interstate clause of the Constitution of the United States.

E. F. WARREN,
Attorney for Defendant.

October 22d, 1906.

STATE OF SOUTH CAROLINA,
Hampton County:

In Common Pleas.

E. E. McTEER
vs.
SOUTHERN EXPRESS CO.

Action before a Magistrate to recover the penalty prescribed by Act of 1903, 24 —, 81. Judgment by Magistrate for plaintiff and appeal by defendant.

I hold the two cases cited by defendant, to wit: Ellis case, 105 U. S., 152, and Ins. Co. *by* Dabny, 189 U. S., 301. I have examined these cases and find no reason to reverse the Magistrate.

It is, therefore, ordered, that the judgment of the Magistrate be affirmed.

GEO. W. GAGE,
Circuit Judge.

Chester, S. C., 8 Jan'y, 1907.

5 SOUTH CAROLINA,
Hampton County:

In Common Pleas.

E. E. McTEER, Plaintiff,
vs.
SOUTHERN EXPRESS CO., Defendant.

Notice of Intention to Appeal.

To W. B. de Loach, Esq., Plaintiff's Attorney:

Take notice that the defendant intends to appeal to the Supreme Court of the State from the decree and judgment rendered herein by Hon. G. W. Gage, Circuit Judge, on 8th January, A. D. 1907.

E. F. WARREN,
Defendant's Attorney.

January —, 1907.

SOUTH CAROLINA,
Hampton County:

In Supreme Court, Second Circuit.

E. E. McTEER, *Defendant*-Respondent,
vs.
SOUTHERN EXPRESS CO., Defendant-Appellant.

The defendant-appellant alleges error on the part of his Honor, Geo. W. Gage, Circuit Judge:

I. For that his Honor erred in deciding that the Act of the General Assembly of the State, to wit: Act 1903, Section 2, page 81, was constitutional; whereas his Honor should have held that the said Act was unconstitutional, and in violation of the fourteenth amendment of the Constitution of the United States.

II. For that his Honor should have held that the Act of the General Assembly, to wit: Act of 1903, page 81, was unconstitutional, for the reason that the said Act contains two separate subject matters.

III. For error in not deciding that the Act of the General Assembly of this State, under which this action is brought and
6 sought to be maintained, is in violation of the interstate commerce clause of the Constitution of the United States, and a violation of the fourteenth amendment of the Constitution of the United States.

IV. For error in not deciding that the plaintiff was not entitled to recover from the defendant the penalty under the Act of the General Assembly of the State, and that said Act was unconstitutional, the said Act containing two separate subject matters, and was in violation of the interstate clause of the Constitution of the United States.

E. F. WARREN,
Defendant's-Appellant's Attorney.

I hereby certify the foregoing to be true copy of the judgment roll on file in this office. Given under my hand and seal this 28th March, 1907.

[L. S.] W. B. CAUSEY, *C. C. P.*

A true copy.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Sup. Ct. S. C.

7 STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1907, Second Circuit, Hampton County.

E. E. McTEER, Plaintiff-Respondent.
vs.
SOUTHERN EXPRESS COMPANY, Defendant-Appellant.

Opinion by IRA B. JONES, A. J.:

The Circuit Court in this case sustained the judgment of a Magistrate in favor of plaintiff against defendant for one dollar and twenty cents, the value of two bottles of whiskey broken and lost while in the possession of defendant for transportation from Covington, Kentucky, to Early Branch in this State and for fifty dollars penalty for failure to adjust the loss within the time required by act of 1903, 24 Stat., 81.

The only exception discussed in this Court was whether the penalty statute was violative of the interstate commerce clause of the Federal Constitution. This question has been considered in several cases at this term of the Court and decided against appellant's contention. Charles *vs.* A. C. L. R. R. Co., Cooper *vs.* S. A. L. Ry. Co.

The exception that the statute is in conflict with Art. III. Sec. 17, of the State Constitution in that it relates to two separate subject matters must be overruled under the authority of Aycock, Little & Co. *vs.* Southern Ry., 76 S. C., 331.

The judgment of the Circuit Court is affirmed.

A true copy.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Sup. Ct. S. C.

[Endorsed:] Remittitur. McTeer *v.* So. Express Co.

8 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between E. E. McTeer, plaintiff, and Southern Express Company, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of

a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendant, Southern Express Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the
9 same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 14th day of November, in the year of our Lord one thousand nine hundred and seven.

[Seal U. S. Circuit Court, District of So. Carolina.]

C. J. MURPHY,
Clerk of the Circuit Court of the United States
for the District of South Carolina.

Allowed to operate as a supersedeas:

Y. J. POPE,
Chief Justice of the Supreme Court of the
State of South Carolina.

10 [Endorsed:] Sheriff & Cost $4.05. United States of America. Southern Express Company, Plaintiff in Error, *vs.* E. E. McTeer, Defendant in Error. Writ of Error. Original. S. Nov. 26. Filed 25.

UNITED STATES OF AMERICA.
State of South Carolina, County of Hampton:

I, J. H. Lightsey, sheriff of said county and State, hereby certify that I served the within Writ of Error on E. E. McTeer, defendant in the within action, by delivering to him personally and leaving with him copy of the same at his residence in said county and State on the 26th day of November A. D., 1907, and that I know the

person so served to be the one mentioned and described as E. E. McTeer, defendant in the within action.

Hampton, S. C., November 29, 1907.

[Seal Sheriff Hampton County, So. Ca.]

J. H. LIGHTSEY, *S. H. C.*

[Endorsed:] Supreme Court of South Carolina. —— Columbia, S. C. Filed 16 Dec., 1907. U. R. Brooks, Clerk.

11 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To E. E. McTeer, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the State of South Carolina wherein Southern Express Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Y. J. Pope, Chief Justice of the Supreme Court of the State of South Carolina, this fourteenth day of November, in the year of our Lord one thousand nine hundred and seven.

Y. J. POPE,

Chief Justice of the Supreme Court of the State of South Carolina.

12 [Endorsed:] 18. United States of America. Southern Express Company, Plaintiff in Error, *vs.* E. E. McTeer, Defendant in Error. Citation. Original. S. Nov. 26. Filed 25.

UNITED STATES OF AMERICA,

State of South Carolina, County of Hampton:

I, J. H. Lightsey, Sheriff of Hampton County, and said State, hereby certify that I served the within Citation on E. E. McTeer, defendant in the within action, by delivering to him personally and leaving with him copy of the same at his residence in said county and State on the 26th day of November A. D. 1907, and that I know the person so served to be the one mentioned and described as E. E. McTeer, defendant in the within action.

Hampton, S. C., November 29, 1907.

[Seal Sheriff Hampton County, So. Ca.]

S. H. LIGHTSEY.

[Endorsed:] Supreme Court of South Carolina. —— Columbia, S. C. Filed 16 Dec., 1907. U. R. Brooks, Clerk.

13 In the Supreme Court of the United States, October Term, 1907.

SOUTHERN EXPRESS COMPANY, Plaintiff in Error,
against
E. E. McTEER, Defendant in Error.

Assignments of Error.

Now Comes Southern Express Company, Plaintiff in Error, and respectfully represents that it feels aggrieved by the proceedings and judgment of the Supreme Court of the State of South Carolina in the above entitled cause, and in connection with its petition for writ of error herein makes the following assignments of error, to-wit:

I.

That the said Supreme Court of South Carolina, in its final judgment rendered in said cause, erred in holding that the Act of General Assembly of the State of South Carolina, approved the 23rd day of February, 1903, (24 Stat. at L. p. 81), entitled "An Act to Regulate the Manner in Which Common Carriers Doing Business in this State Shall Adjust Freight Charges and Claims for Loss of or Damage to Freight," which imposes a penalty of Fifty Dollars for failure to adjust and pay, within ninety days after filing, a claim for loss of or damage to freight coming from without the State, so far as it affects carriers doing business in the State of South Carolina who fail or refuse to adjust and pay the loss of or damage to goods either proved or *presumed* to have come into their possession, is not an unlawful interference with interstate commerce, even as
14 applied to an interstate shipment: whereas said Court should have held that said Act was an illegal regulation of and burden upon interstate commerce in violation of Article I, Section 8, Clause 3, of the Constitution of the United States.

Wherefore, the said Southern Express Company, Plaintiff in Error, prays that the said judgment of the said Supreme Court of the State of South Carolina be reversed, and that the said Supreme Court of the United States may cause further to be done therein to correct that error what *or* right and according to the laws and customs of the United States should be done.

WILLCOX & WILLCOX,
HENRY E. DAVIS,
Attorneys for Plaintiff in Error.

15 [Endorsed:] In the Supreme Court of the United States, October Term, 1907. Southern Express Co., Plaintiff in Error, *vs.* E. E. McTeer, Defendant in Error. Assignments of Error. Original.

16 Know all men by these presents, That we Southern Express Company, as principal, and The Title Guaranty & Surety Co., as sureties, are held and firmly bound unto E. E. McTeer in the full and just sum of Four Hundred ($400.00) Dollars to be paid to the said E. E. McTeer, his certain attorneys, executors, administrators, heirs or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 20th day of November, in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at a term of the Supreme Court of the State of South Carolina, in a suit pending in said Court between E. E. McTeer and Southern Express Company a judgment was rendered by the said Southern Express Company, and the said Southern Express Company having obtained a writ of error and filed a copy thereof in the Clerk's office of said Court to reverse the judgment in the aforesaid suit, and a citation directed to E. E. McTeer citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Southern Express Company shall prosecute its writ of
17 error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

SOUTHERN EXPRESS COMPANY,
By T. W. LEARY, *First Vice-President.*
THE TITLE GUARANTY & SURETY COMPANY,
By W. C. SWAFFIELD, *Attorney in Fact.*

Witness:

J. T. BARRON.
CHAS. H. BARRON.

Approved:

Y. J. POPE,
Chief Justice of the Supreme Court of the State of South Carolina.

A true copy.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk Sup. Ct. S. C.

18 [Endorsed:] Southern Express Company, Plaintiff in Error, *vs.* E. E. McTeer, Defendant in Error. Copy Bond.

19 STATE OF SOUTH CAROLINA:

In the Supreme Court.

SOUTHERN EXPRESS COMPANY, Plaintiff in Error,
vs.
E. E. MCTEER, Defendant in Error.

Return to Writ of Error.

I, U. R. Brooks, Clerk of the Supreme Court of the State of South Carolina, by way of return to the Writ of Error directed to said Court by the Supreme Court of the United States in the above entitled cause, herewith transmit under my hand and seal a true copy of the record and of the assignment of errors and of all proceedings in the case, together with true copies of all opinions filed in the case, and I hereby certify that the record herewith transmitted is complete, containing in itself and not by reference all papers, exhibits, depositions and other proceedings necessary to the hearing of said case in the Supreme Court of the United States.

Witness my hand and the seal of the Supreme Court of the State of South Carolina this 16th day of December, 1907.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk of the Supreme Court of South Carolina.

Endorsed on cover: File No. 20,983. South Carolina supreme court. Term No. 255. Southern Express Company, plaintiff in error, *vs.* E. E. McTeer. Filed January 22d, 1908. File No. 20,983.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 60.

ATLANTIC COAST LINE RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

R. KEITH CHARLES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

FILED JANUARY 25, 1908.

(20,986.)

(20,986.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 258.

ATLANTIC COAST LINE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

R. KEITH CHARLES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

INDEX.

	Original.	Print
Caption	1	1
Case with exceptions	1	1
Complaint	1	1
Summons	3	2
Demurrer	4	2
Answer	4	3
Copy of bill	5	3
Testimony of R. K. Charles	6	4
Magistrate's judgment	8	5
Notice of appeal to circuit court and exceptions	8	6
Order of circuit court dismissing appeal	11	7
Notice of appeal to supreme court and exceptions	14	9
Agreement as to case on appeal	16	10
Acceptance of service of case on appeal	16	10
Exhibit E—Way-bill	17	11
Exhibit F—Freight bill	18	12
Opinion	20	12
Petition for writ of error	26	16
Writ of error	30	18
Citation	33	19
Bond on writ of error	35	19
Assignments of error	38	20
Clerk's certificate	41	21

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 5, 1909.

1 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, November Term, 1906, Third Circuit, Florence County.

R. KEITH CHARLES, Plaintiff,
against
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Case with Exceptions.

This case was commenced by the service of a summons and complaint on the 1st day of February, 1906. The following is the complaint:

Complaint.

The plaintiff, complaining of the defendant, alleges:

I. That at all the times herein mentioned the defendant was and still is a railroad corporation duly organized and doing business in this State under the laws thereof, and did and does carry on the business of a common carrier of goods and merchandise between points wholly within this State and between points within and without this State, and did and does so conduct said business within the county aforesaid.

2 II. That on or about the 23d day of August, 1905, Martin J. Wynne shipped from New Orleans, State of Louisiana, to the defendant, at Timmonsville, county and State aforesaid, one lot of rice in sacks, the property of the plaintiff, and which property came into the possession of defendant as such common carrier, and it undertook, as such common carrier, in consideration of the payment of its usual charges, to safely transport and deliver the same to the plaintiff at Timmonsville, S. C.

III. That the defendant did not safely transport said property and deliver the same to the plaintiff at Timmonsville, S. C., but so negligently conducted itself in that regard that four sacks of said rice was lost to the plaintiff, and, though a portion of said property was so delivered, the defendant failed to so deliver said four sacks of rice.

IV. That the value of the said rice was and is the sum of eighteen dollars.

V. That on the 27th of September, 1905, the plaintiff duly filed a claim against the defendant for eighteen dollars for the loss of said property, with the agent of the defendant at Timmonsville, S. C., the point of destination of such shipment, and demanded the payment thereof.

VI. That the defendant has failed to adjust and pay said claim, though more than ninety days have elapsed since the same was so filed with defendant's agent at Timmonsville, S. C., and the defendant has, by such default, become liable to the plaintiff for the

sum of fifty dollars, the penalty prescribed by the Act of the Legislature of this State, entitled: "An Act to Regulate the Manner in which Common Carriers Doing Business in this State Shall Adjust Freight Charges and Claims for Loss of or Damage to Freight," approved the 23d of February, 1903.

Wherefore, the plaintiff demands judgment against the defendant for the sum of eighteen dollars, with interest thereon from
3 the 27th day of September, 1905, and the further sum of fifty dollars, the penalty prescribed by the said Act.

GALLETLY & RAGSDALE,
Plaintiff's Attorneys.

Magistrate's Summons for Debt.

THE STATE OF SOUTH CAROLINA.
County of Florence:

By R. S. Smith, Esq., to Atlantic Coast Line Railroad Company:

Complaint having been made unto me by R. Keith Charles that you are indebted to him in the sum of sixty-eight dollars, with interest on eighteen dollars from the 27th of September, 1905; eighteen dollars of which is for loss of goods, and fifty dollars of which is for penalty for failure to adjust and pay the said claim within ninety days from the date of filing the same with your agent at Timmonsville, S. C., as will more fully appear by reference to the written complaint hereto attached and served on you and made a part hereof.

This is, therefore, to require you to appear before me, in my office, at Florence, on the 22d day of February, A. D. 1906, at 11 o'clock A. M., to answer to the said complaint, or judgment will be given against you by default.

Dated: Florence, S. C., February 1, A. D. 1906.

R. S. SMITH, *Magistrate.* [L. S.]
GALLETLY & RAGSDALE,
Plaintiff's Attorneys.

4 The defendant in due time demurred to the complaint, and the following is a copy of the demurrer:

Demurrer.

The above-named defendant demurs to so much of plaintiff's complaint as undertakes to set up cause of action for a penalty of fifty ($50) dollars by reason of the non-payment within ninety days after its filing of plaintiff's alleged claim, on the ground that it appears on the face of the complaint that such penalty was claimed on account of an interstate shipment, and because as to interstate shipments the Act entitled "An Act to regulate the manner in which common carriers doing business in this State shall adjust freight charges and claims for loss of or damage to freight," approved by

the General Assembly of the State of South Carolina on the 23d day of February, 1903, is in contravention of Article I. Section 8 of the Constitution of the United States, and, therefore, null and void.

WILLCOX & WILLCOX,
Defendant's Attorneys.

The demurrer being overruled, the defendant answered, and the following is a copy of its answer:

Answer.

The defendant, answering the above-named complaint, alleges:

First. That it admits the allegations contained in paragraph I of the said complaint.

Second. That it has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs II, III, IV, V and VI of said complaint.

5 *Third.* That the Act of the General Assembly of the State of South Carolina, entitled "An Act to regulate the manner in which common carriers doing business in this State shall adjust freight charges and claims for loss or damage to freight," approved the 23d day of February, 1903, is, as to interstate shipments, in contravention to Article I. Section 8 of the Constitution of the United States, and, therefore, null and void.

Fourth. That plaintiff's complaint shows on its face that it is based upon an interstate shipment, and, therefore, the Act of the General Assembly of South Carolina, above mentioned, is, as to this shipment, null and void, and plaintiff is in no event entitled to recover a penalty in this action.

WILLCOX & WILLCOX,
Defendant's Attorneys.

The case came on for trial before Magistrate R. S. Smith on the 23d day of February, 1906, and the following testimony was introduced:

(Copy of Bill.)

NEW ORLEANS, *August* 23, 1905.

Mr. R. Keith Charles, Timmonsville, S. C., to Martin J. Wynne, Dr.

131 Ex. fcy. 10 pkts. Rice 1000 11_2	$45.00
C. A. Ex. fcy. 10 pkts. Rice 1000 43_8	43.75
A. C. S. Ex. fcy. 10 pkts. Rice 1000 37_8	38.75
	$127.50
Less freight, 45c	13.50
	$114.00

Ex. C.
Shipped via L. & N. Rd.

6 *Testimony.*

Defendant demurs. Same overruled. Demurrer attached in writing.

Answer filed. Exhibit "B."

R. K. CHARLES, sworn, says that I am plaintiff in this case.

Q. After 23d of August, 1905, did you purchase any rice of Martin Wynne of New Orleans?

(Objected to.)

No allegation of any rice being purchased from this party, and if there was such a purchase, it should be in writing; same would be best evidence of the contract.

Q. Early part of August, 1905, did you order any rice from Martin J. Wynne of New Orleans, La?

A. I did.

Q. How much, and when ordered shipped?

A. I would often order sixty (60) bags rice, and they accept by wire or letter.

(Objected to on the ground that order and acceptance was in writing; that being the case, verbal testimony is inadmissible to prove same, and moved to strike out testimony on that ground.)

I ordered thirty (30) bags shipped at once; some at later date. I received bill for thirty (30) bags by mail. Bill, Exhibit "C."

(Objected to by attorney for defendant, on the ground that this bill has no relevancy to the issue, nor attempts to prove any allegation in complaint, and relates to a transaction entered into between the plaintiff and parties who are not in Court.)

Paper entered in evidence.

I received this paper in the same letter in which I received bill of goods offered in evidence. Paper offered in evidence.

7 (Objected to on the ground that it purports to be a contract between parties who are not before the Court; that it purports to be a contract in writing, and the signature thereto has neither been proven or identified, nor has it been proven that the parties who signed same had any authority to bind defendant by his signature.)

Q. Did you pay A. C. L. R. R. Co.?

A. I paid Coast Line agent at Timmonsville $13.50 freight on rice, September 6, 1905. I gave receipt to agent at Timmonsville. This is copy of original receipt given by agent of Coast Line at Timmonsville, with the exception error in date, which — be 9-6 instead of 10-6.

(Objected to on the ground that freight bill is no evidence of receipt by A. C. L. R. R. of the goods alleged to have been lost.) (Exhibit "F.")

When I got that bill rice checked, except four (4) sacks marked 131 from the bill of Martin J. Wynne. Check on Wynne and freight bill both.

Q. How many sacks rice have you paid Wynne for?

(Objected to—not issue in case.)

A. I paid for thirty (30) pockets of rice—100 pounds in each pocket (average). Costs $1.50 per pocket. The four pockets worth $18: cost me this amount: my selling price more than this amount—$18. I did not show agent at Timmonsville bill of lading. I write Martin J. W. Wynne—I gave him copy bill of lading, but he returned it to me: sent to New Orleans for another and he returned first to me.

(Moved to be stricken out by defendant.)

The paper would be best evidence on this ground moved to be stricken out, as copy of original was retained by railroad company's agent at Timmonsville, but lost.

This is copy claim filed with railroad agent at Timmonsville on 27th September, 1905. That is copy bill lading on which demand was made.

Bill of lading, Exhibit "G."

8 (Objection to this being introduced, as there is no evidence of a proper claim being made.)

I demanded payment of money. It has not been paid.

(No objection, except without bill of lading.)

They delivered me twenty-six (26) sacks of rice of that shipment. Rice was delivered to me at Timmonsville, where I live. Coast Line has station at Timmonsville.

I filed claim on the 27th of September, 1905, without bill of lading—a few days later I filed with bill of lading—only a short time after this, I know.

New Orleans is not in South Carolina. I did not go to New Orleans to buy rice. My contract was in writing—had letter acceptance—not present when rice was loaded. I do not know where it was lost, if on Coast Line or some other railroad.

The Magistrate rendered the following judgment in favor of the plaintiff:

I find for the plaintiff, R. K. Charles, the sum of eighteen dollars and interest, 18 cents, and penalty, $50, and costs.

R. S. SMITH, *Magistrate*. [L. S.]

February 23, 1906.

Within due time, the defendant appealed to the Circuit Court, and served the following exceptions to the ruling and judgment of the Magistrate:

Notice.

To Messrs. Calletly & Ragsdale, Plaintiff's Attorneys:

Please take notice that the defendant in the above stated action intends to appeal and does hereby appeal to the Circuit Court from the rulings of the Magistrate in the trial of the above stated
9 case, and from the judgment rendered therein, and will move the Circuit Court to reverse said judgment upon the following exceptions, to wit:

First. Because the Magistrate erred, it is respectfully submitted, in overruling the demurrer of the defendant to so much of plaintiff's complaint as undertook to set up the claim for a penalty. He should have sustained the demurrer and stricken from the complaint so much thereof as undertakes to set up a claim to a penalty by reason of the fact that it appears on the face of the complaint that the shipment sued for was an interstate shipment, and because as to interstate shipments the Act entitled "An Act to regulate the manner in which common carriers doing business in this State shall adjust freight charges and claims for loss of or damage to freight," is in contravention of Article I, Section 8 of the Constitution of the United States, and, therefore, null and void.

Second. Because the Magistrate erred, it is respectfully submitted, in admitting testimony of R. Keith Charles, tending to show the purchase of rice, when it appeared that the contract for the purchase was in writing. He should have ruled out the testimony in question, on the ground that it having been made to appear that the contract was in writing, the writing itself was the best evidence and the only admissible evidence of the terms of the contract.

Third. Because the Magistrate erred, it is respectfully submitted, in permitting the witness, R. Keith Charles, to testify as to the contents of his order and the acceptance thereof, after it had been made to appear that both the order and the acceptance were in writing.

Fourth. Because the Magistrate erred, it is respectfully submitted, in admitting, over the objection of the defendant, the bill rendered by Martin J. Wynne to R. Keith Charles, Exhibit "C," said bill being entirely irrelevant to any issue in the case, and relating to a transaction between other parties than the parties to this suit.
10 *Fifth.* Because the Magistrate erred, it is respectfully submitted, in admitting in evidence, over the objection of the defendant, the bill of lading, Exhibit "E," there being no proof whatever either of its execution, of the authority of the party whose name is signed thereto to bind the Louisville & Nashville Railroad Company, or of any connection between Louisville & Nashville Railroad Company and the defendant in this transaction.

Sixth. Because the Magistrate erred, it is respectfully submitted, in admitting in evidence the freight bill, Exhibit "F," the same being entirely irrelevant to any issue raised by the pleadings, and there being no evidence that this freight bill related to the rice sued for, and being inadmissible as evidence of the delivery of any merchandise to the defendant company.

Seventh. Because the Magistrate erred, it is respectfully submitted, in permitting the witness, R. Keith Charles, to testify, over the objection of the defendant, that he delivered a copy of a certain paper to the defendant company. He should have held that the paper so delivered was the best evidence of its contents and that variable testimony as to its contents was inadmissible.

Eighth. Because the Magistrate erred, it is respectfully submitted, in admitting in evidence the alleged claim of the plaintiff, Exhibit "G," over the objection of the defendant, when said alleged claim was not in such shape as the statute required, and the paper introduced purporting to be a copy of the original paper which would have been the best evidence of its contents.

Ninth. Because the Magistrate erred, it is respectfully submitted, in finding a verdict and judgment for the plaintiff for a penalty of fifty (850) dollars, in absence of proof that a claim was filed with the railroad company more than ninety (90) days previous to the commencement of this action. He should have found
11 for the defendant, on the ground that there was no proof of the filing of such claim within the time required by the statute.

Tenth. Because the Magistrate erred, it is respectfully submitted, in finding a verdict and judgment for the plaintiff, in the absence of any testimony to support it. He should have found that there was no testimony tending to show that the rice sued for ever came into the possession of the defendant, as alleged in plaintiff's complaint; that there was no testimony tending to show the loss by the defendant of any goods belonging to the plaintiff, and that the plaintiff in all particulars had failed to make out his case as alleged.

Eleventh. Because the Magistrate erred, it is respectfully submitted, in not holding and ruling that the Act entitled "An Act to regulate the manner in which common carriers doing business in this State shall adjust freight charges and claims for loss or damage to freight," approved by the General Assembly of the State of South Carolina the 23d day of February, 1903, is, as to interstate shipments, in contravention of Article I, Section 8 of the Constitution of the United States, and, therefore, null and void, and should have found on this ground for the defendant, so far as the penalty sued for was concerned.

WILLCOX & WILLCOX,
Defendant's Attorneys.

The case came on for hearing on appeal to the Circuit Court, at the June Term of the Court of Common Pleas for Florence County, before his Honor Judge George W. Gage, who rendered the following order, dismissing the appeal:

Order.

There are eleven stated grounds of appeal from the judgment of the Magistrate, but only one was argued before me. It is con-
12 tended that the acts of the General Assembly which impose on the defendant terminal company the duty to inform the

plaintiff consignee upon what particular connecting railroad line out of this State the rice was lost, if not lost by the terminal company, are in contradiction of the Federal Constitution, where that instrument vests exclusively in Congress the right to lay burdens on interstate commerce.

The acts in question are those of 1894 and 1903, found at Section 1710, Code of Laws, and Gen. Stats., 81 and 82.

The thing in issue is four sacks of rice, shipped over the Louisville & Nashville Railroad Company as the initial line, from New Orleans, La., to Timmonsville, S. C.

It does not appear whether, betwixt the initial and terminal lines, there were intermediate roads.

The contract of shipment, evidenced by the bill of lading, provides that neither the initial nor any other carrier shall be liable for loss not occurring on its own line.

That is equivalent to a provision suggested by the statute, that the responsibility of each carrier should cease upon delivery of the thing in good order to the next carrier.

There was only one witness, and he the plaintiff. There was no testimony for the defendant. There was shipped from New Orleans thirty sacks of rice; and there was received at Timmonsville twenty-six sacks of rice; there was missing four sacks of rice.

The defendant presented to and collected from the plaintiff a freight bill for thirty sacks of rice, and marked on the bill: "4 sacks short."

If the rice which is missing ever came into the possession of defendant, then it is liable to the plaintiff for the value thereof, and that without reference to any statute.

And if in like case payment thereof was deferred beyond ninety days, then the Statute of 1903 creates a further liability for a penalty of $50.

In the second proviso of that Act, it is written, the defend-
13 ant may escape liability for the penalty, in those cases where the property never got into its possession, by informing the owner which particular connecting line did lose the property, in the way particularly set out at Section 1710 of the Code of Laws, which is the Act of 1894.

It has been expressly decided that an initial or connecting carrier cannot be made liable for lost property (lost on another line) because of its failure to advise the owner upon which particular interstate line the property was lost. 196 U. S., 194.

The requirement to so advise the owner of the real loser, is held to be a burden laid on interstate commerce, a power vested in Congress alone.

The terms of the proviso of the Act of 1903 are, therefore, invalid so far as they refer to commerce between the States.

The proviso, however, expressly refers to cases where the property "never came into the possession" of a carrier, and invokes the procedure described in the Act of 1894, in those cases, and in them alone.

In the case at bar, I think it is warrantable to conclude that the

four sacks of rice did come into the possession of the defendant company, for it collected the freight on the four sacks and declared that the rice was missing. Enough was proven to cast on the defendant company the burden of proving that when the shipment reached its line, four sacks were then missing.

The defendant alone knew the fact, and it did not prove it.

If, therefore, the Act of 1894 was valid, the defendant could not discharge itself thereunder, for the defendant was in possession of the thing lost.

I am of the opinion the judgment must be affirmed, and it is so ordered.

23 July, 1906.

GEO. W. GAGE,
Circuit Judge.

14 The defendant, in due time, served notice of appeal to the Supreme Court upon the following exceptions:

First. His Honor erred, it is respectfully submitted, in not holding that the Magistrate erred in admitting testimony of R. Keith Charles, tending to show the purchase of rice, when it appeared from his testimony that the contract for the purchase was in writing. He should have held that this testimony was inadmissible and incompetent, and that the writing itself was the only admissible evidence of the terms of the contract.

Second. His Honor erred, it is respectfully submitted, in not holding that the Magistrate erred in permitting the witness, R. Keith Charles, to testify to the contents of his order and the acceptance thereof, after it had been made to appear that both the order and the acceptance were in writing.

Third. His Honor erred, it is respectfully submitted, in not holding that the Magistrate erred in admitting, over the objection of the defendant, the bill rendered by Martin J. Wynne to R. Keith Charles, Exhibit "C," said bill being entirely irrelevant to any issue in the case.

Fourth. His Honor erred, it is respectfully submitted, in not holding that the Magistrate erred in admitting, over the objection of the defendant, the alleged bill of lading, Exhibit "E," in the absence of proof of its execution, of the authority of the party whose name was signed thereto to bind the Louisville & Nashville Railroad Company, and in the absence of any proof of any connection or relation between the Louisville & Nashville Railroad Company and the defendant company.

Fifth. His Honor erred, it is respectfully submitted, in not holding that the Magistrate erred in admitting in evidence the freight bill, Exhibit "F," the same being entirely irrelevant to any issue raised by the pleadings, and there being no evidence that this
15 freight bill related to the rice sued for, and it being irrelevant to the issue as to whether or not rice came in the possession of the defendant.

Sixth. His Honor erred, it is respectfully submitted, in not finding that there was no testimony tending to prove that plaintiff's claim

was filed with the railroad company more than ninety (90) days previous to the commencement of this action, and in not sustaining appeal on this ground.

Seventh. His Honor erred, it is respectfully submitted, in not finding that there was no testimony whatever tending to show that the rice sued for ever came into possession of the defendant; that there was no testimony tending to show the loss by the defendant of any goods belonging to the plaintiff, and that the plaintiff in all particulars had failed to make out his case as alleged.

Eighth. His Honor erred, it is respectfully submitted, in holding that there is testimony tending to show that the four sacks of rice did come into the possession of the defendant company because it collected the freight on four sacks and declared that the rice was missing, when, as a matter of fact, there was no competent evidence introduced tending to show that the rice referred to in the copy freight bill introduced was the rice sued for by the plaintiff, or the rice alleged to have been shipped under the bill of lading introduced.

Ninth. His Honor erred, it is respectfully submitted, after holding and finding that the claim in question arises out of an interstate shipment, and after holding that the penalty Act is invalid as to interstate shipments, in not reversing the judgment of the Magistrate for the statutory penalty.

Sept. 19, 1906.

WILLCOX & WILLCOX,
Appellant's Attorneys.

16 We hereby agree that the foregoing proposed case, when printed, shall be the case on which this appeal is to be heard in the Supreme Court, and shall constitute the return herein.

WILLCOX & WILLCOX,
Appellant's Attorneys.

We hereby admit due and personal service of a copy of the within proposed Case and Exceptions, this September 19, 1906, at Florence, S. C.

GALLETLY & RAGSDALE,
Respondent's Attorneys.

[Seal Supreme Court of South Carolina.]

A true copy.
U. R. BROOKS, *Clerk.*

17 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, November Term, 1906, Third Circuit, Florence County.

EXHIBIT E.

Louisville and Nashville Railroad Co.

NOTE.—The rate named is a reduced rate given in consideration of the shipper entering into the contract set out below. If the shipper prefers that the shipment shall be transported at carrier's risk, limited only as provided by common law and the laws of the United States, and of the several States in so far as they apply, he can accomplish that result by notifying the carrier's agent, and shipping at a rate 20 per cent. higher than the rate indicated herein (with a minimum increase of 1 per cent. per 100 pounds).

Received by the Louisville and Nashville Railroad Company (hereinafter called the Company), at New Orleans Station, 8/25, 1905, from Martin J. Wynne (hereinafter called the shipper, and who makes this contract as owner or as agent for the owner), the following described property (contents and value unknown), in apparent good order, except as noted, and consigned and marked as indicated.

131 Scs. 10 (30) Thirty pkts. Rice.
C. A. Scs. 10 Signed Aug. 25, 1905.
A. C. S. Scs. 10 R. Keith Charles, Timmonsville, S. C.
Through rate guaranteed.
15c. per 100 lbs.
Original.

18 No liability will be assumed for wrong carriage or wrong delivery of goods marked incorrectly, or with initial or number. The fact that the property is marked to a point beyond the Company's line shall not be construed as an agreement by the Company to carry beyond its line.....
.....

LOUISVILLE AND NASHVILLE RAILROAD CO.,
By O. H. BARTLETT, *Agent.*

EXHIBIT F.

Form 239 A.

Freight Bill, Timmonsville Station.

Date 9/5 1905.

Pro. No. 2163.

(Agents must insert station name in space S. C.)
Consignee, Destination, Route and Marks.

R. K. Charles to Atlantic Coast Line Railroad Company, Dr., for Charges on Articles Transported.

From	W. B. Number.	Date.	Car Initial and No.	Consignor.
	A C L		Sou	M G W
Atla.	1669	8/29	36269	

Show in this space all foreign reference ex car numbers, etc.

Articles.	Weight.	Rate.	Advances.	Freight.	Collect.
.....		15	.....	.....	.....
30 Pkts Rice....	3000	5	.....	.....	.....
.....		25	6.00	7.50	.....
(4 sx Short)		..	.....	.....	.....
.....		..	.....	.....	13.50
.....Copy		..	.....	.....	.....

19 Claims for Overcharge, Loss or Damage must be made within two days after delivery.
Original Paid Freight Bill Must accompany all Claims.
Paid 10/06/05.

M. D. MUNN, *Agent.*

A true copy.
U. R. BROOKS, *Clerk.*
[Seal Supreme Court of South Carolina.]

20 STATE OF SOUTH CAROLINA:

In the Supreme Court. April Term, 1907. Third Circuit. Florence County.

R. KEITH CHARLES, Plaintiff-Respondent,
against
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant-Appellant.

Opinion by Ira B. Jones, A. J.

This action was brought in a Magistrate Court to recover the value of four sacks of rice alleged to have been shipped from New

Orleans, La., by Martin J. Wynne to the plaintiff at Timmonsville, S. C., and to have been lost while in the possession of the defendant carrier, and also to recover fifty dollars penalty for failure to adjust and pay the claim within ninety days as prescribed by the act of Feb. 23rd, 1903. The Magistrate gave judgment against defendant for the amount claimed, $68.48, which judgment on appeal was affirmed by the Circuit Court.

We notice first appellant's seventh and eighth exception alleging error in finding that the rice sued for was lost while in the possession of the defendant, there being no testimony whatever tending to show such fact. The Circuit Court found that "the defendant presented to and collected from the plaintiff a freight bill for thirty sacks of rice and marked on the bill "4 sacks short," * * * that it was warrantable to conclude that the four sacks of rice did come into the possession of the defendant company for it collected the freight on the four sacks and declared that the rice was missing. Enough was proven to cast on the defendant company the burden of
21 proving that when the shipment reached its line four sacks were then missing. The defendant alone knew the fact and it did not prove it."

The plaintiff was the only witness examined in the case and his testimony warranted the conclusion of the Circuit Court, if his testimony on this point was admissible. The fifth exception charges that it was error to admit in evidence the freight bill, Exhibit F., on the ground of irrelevancy. It appears from the exhibit that defendant collected from plaintiff thirteen and 50 100 dollars freight for transporting "30 pkts. Rice" and that the consignor was M. J. W. and that four sacks were short. Plaintiff testified that in August, 1905, he ordered Martin J. Wynne of New Orleans to ship thirty bags of rice and paid him for the same, that he paid the freight for thirty bags and only received twenty-six. There was no evidence of any other order by plaintiff for rice or shipment of rice to plaintiff during the period involved in the controversy. The freight bill and its payment with this statement endorsed thereon was clearly relevant. It tended to show a single shipment of thirty bags of rice to plaintiff by one whose initials were the same as those of the alleged shipper, and that charge was made by defendant for transporting that number of bags, coupled with an admission that four were missing. This was at least sufficient to make out a *prima facie* case of loss while in the possession of defendant and to cast upon defendant the burden of showing that the loss did not occur on its line. Willett *vs.* Ry., 63 S. C., 478; Walker *vs.* Ry., 76 S. C., 309.

The foregoing conclusion renders it immaterial to consider the third and fourth exceptions to the admission of testimony by the Magistrate, for it may be conceded that it was error to admit in evidence a bill of lading purporting to be issued by the Louisville and Nashville Railroad Company for thirty sacks of rice consigned
22 by Martin J. Wynne to plaintiff, without some proof that it was in fact issued to the consignor by an authorized agent, and that it was also error to allow in evidence a bill for thirty packages of rice rendered to plaintiff by Martin J. Wynne, dated August

23rd, 1905, containing the words "shipped via L. & N. Rd.", being the mere statement of Martin J. Wynne not examined in this case, still the error was harmless as this testimony may be stricken from the record and leave undisputed testimony sufficient to sustain a judgment for the loss of the goods while in defendant's possession.

Section 368 of the Code requires that on appeals from Magistrate's Court judgment should be rendered according to the justice of the case without regard to technical errors and defects which do not affect the merits.

The first and second exceptions allege error in permitting plaintiff to testify that he had purchased thirty bags of rice from Martin J. Wynne without producing the written order and acceptance therefor admitted to be in existence. This not being a suit between plaintiff and Martin J. Wynne touching the purchase of the rice and defendant's liability being dependent not upon such contract of purchase but upon its possession for transportation of goods consigned to plaintiff, the contract in question involved merely a collateral matter as to which parol testimony was admissible. Elrod *vs.* Cochran, 59 S. C., 470.

The ninth exception assigns error in not reversing the judgment of the Magistrate for the statutory penalty, after having held that the claim in question arose out of an interstate shipment and that the penalty statute was invalid as to interstate shipments. What the Circuit Court really held were that the terms of the proviso of the act of 1903 were invalid in so far as they refer to commerce between the states, under the authority of Central of Georgia R. R. *vs.* Murphy, 1906 U. S., 194, but that defendant could not avail itself of the invalidity of this proviso, as the evidence showed that defendant was in possession of the goods lost. In other words,

23 that the penalty statute of 1903 does not violate the interstate commerce law in so far as it applies to common carriers in this State in whose possession the goods are lost or damaged. The Georgia statute, which was condemned in the Murphy case as an unlawful interference with interstate commerce, imposed upon the initial or connecting carrier, as a condition of availing itself of a valid contract of exemption from liability beyond its own line, the duty of tracing the freight and informing the shipper in writing when, where and how and by what carrier the freight was lost, damaged or destroyed and of giving the names of the parties and their official position, if any, by whom the truths set out in the information can be established. The distinction between the Georgia statute and our statute, section 1710, is pointed out in Skipper *vs.* Seaboard Air Line, 75 S. C., 276, which sustained section 1710 as not violative of interstate commerce. We are, however, not now to consider the validity of section 1710, but we are to consider the validity of the act of 1903, 24 Stat., 81, as applied to interstate shipments. The statute by its title is "An Act to regulate the manner in which a common carriers doing business in this State shall adjust freight charges and claims for loss of or damage to freight." Section 2 provides "That every claim for loss of or damage to freight while in the possession of such common carrier shall be adjusted and paid

within forty days, in case of shipments wholly within this State, and within ninety days, in case of shipments without this State, after the filing of such claim with the agent of such carrier at the point of destination of such shipment: *Provided*, That no such claim shall be filed until the arrival of the shipment or of some part thereof at the point of destination, or until after the lapse of a reasonable time for the arrival thereof. In every case such common carrier shall be liable for the amount of such loss or damage, together with
24 interest thereon from the date of the filing of the claim therefor until the payment thereof. Failure to adjust and pay such claim within the periods respectively herein prescribed shall subject each common carrier so failing to a penalty of fifty dollars for each and every such failure, to be recovered by any consignee or consignees aggrieved in any Court of competent jurisdiction: *Provided*, That unless such consignee or consignees recover in such action the full amount claimed, no penalty shall be recovered, but only the actual amount of the loss or damage, with interest as aforesaid: *Provided, further*, That no common carrier shall be liable under this act for property which never came into its possession, if it complies with the provisions of section 1710, Vol. 1, of the Code of Laws of South Carolina, 1902."

The last proviso, as the Circuit Court correctly held, has no application to carriers into whose possession the goods have come. Construing the statute in Seegers *vs.* Ry., 73 S. C. 71, the Court said "The duty to make prompt settlement for loss or damage to goods is but an incident of the duty to transport and deliver safely and with reasonable diligence. The statute in question was designed to effectuate an important public purpose, viz: to compel the common carrier to perform with reasonable diligence the duty which peculiarly appertains to his business as a carrier of freight. The penalty is but a means to that end."

While it is not easy to define the exact limits of the operation of State laws as affecting interstate commerce, we have no hesitation in saying that the statute in question, as it affects carriers doing business in this State who fail or refuse to adjust and pay the loss of or damage to goods while in their possession, is no unlawful interference with interstate commerce even as applied to an interstate shipment. The penalty imposed is for a delict of duty appertaining to the business of a common carrier, and in so far as it may affect interstate commerce it is an aid thereto by its tendency to promote
25 safe and prompt delivery of goods, or its legal equivalent—prompt settlement of proper claim for damages. No penalty can attach except upon the establishment in a Court of a default of duty imposed by statute. The statute does not attempt to regulate interstate commerce and imposes no tax or burden thereon. It is supported by the general principle declared in Sherlock *vs.* Alling, 93 U. S., 99, 104, and enforced in Smith *vs.* Alabama, 124 U. S., 465, and Nashville etc., R. R. *vs.* Alabama, 128 U. S., 96, that State legislation "relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within the territorial juris-

diction, whether on land or water or engaged in commerce foreign or interstate, or in any other pursuit." In the case of Western Union Tel. Co. *vs.* James, 162 U. S., 650, a statute of Georgia requiring telegraph companies to transmit and deliver dispatches with impartiality, good faith and diligence under penalty of $100.00 in each case, in the absence of legislation by Congress on the subject, was held not to be an unwarrantable interference with interstate commerce as to messages without the State.

The exceptions are overruled and the judgment of the Circuit Court is affirmed.

[Seal Supreme Court of South Carolina.]

A true copy.
U. R. BROOKS, *Clerk*.

[Endorsed:] Remittitur Charles *v.* A. C. L. R. R.

26 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, November Term, 1907, Third Circuit, Florence County.

R. KEITH CHARLES, Plaintiff-Respondent,
against
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant-Appellant.

Petition for Writ of Error.

To the Honorable Y. J. Pope, Chief Justice of the Supreme Court of South Carolina:

Now comes your petitioner, Atlantic Coast Line Railroad Company, defendant and appellant in the above entitled cause, and respectfully shows:

I.

That on the 31st day of August, 1907, the Supreme Court of South Carolina, being the highest court of law or equity in said State in which a decision could be had, rendered a final judgment in the above entitled cause whereby it affirmed the judgment rendered in said cause by the Court of Common Pleas for Florence County in said State.

27 II.

That when the complaint in said cause was filed your petitioner as defendant therein interposed as a defense to the cause of action for the penalty of Fifty Dollars, first by way of demurrer and later by way of answer, that the act of the General Assembly of the State of South Carolina, approved the 23d day of February, 1903, entitled "An Act to Regulate the Manner in Which Common Carriers Doing Business in this State Shall Adjust Freight Charges and Claims for Loss of or Damage to Freight (24 Stat. 81), as applied to an inter-

state shipment, such as was the shipment out of which the claim in said action arose, was in contravention to Article I., sec. 8, clause 3, of the Constitution of the United States, and therefore null and void.

III.

That said defense of the unconstitutionality of the statute prescribing the penalty was urged at the trial of the cause in the magistrate's court, and was by said court overruled and judgment given against your petitioner for the amount of the claim and Fifty Dollars penalty; that your petitioner duly appealed to the Court of Common Pleas for Florence County, which, by its order, overruled said defense and affirmed the judgment of the magistrate's court; and that from this order your petitioner appealed to the Supreme Court, which by its final judgment heretofore referred to likewise overruled the defense set up by your petitioner, and affirmed the judgment against it for the penalty.

IV.

That by the action of said Supreme Court of South Carolina in its final judgment aforesaid affirming the judgment of the lower court against your petitioner for the penalty of Fifty Dollars holding
that said Act of the General Assembly of South Carolina pre-
28 scribing said penalty is not, as applied to an interstate shipment, an illegal regulation of and burden upon interstate commerce, in violation of Article I., section 8, clause 3, of the Constitution of the United States, your petitioner has been denied a title or right set up and claimed under the United States, to-wit: the right to an exemption from the penalty of Fifty Dollars prescribed by said Act of the General Assembly of the State of South Carolina by reason of the fact that the shipment out of which the claim arose constituted interstate commerce, and as such was within the jurisdiction of Congress under the terms of Article I., section 8, clause 3, of the Constitution of the United States; whereby manifest error has happened to the very great damage of your petitioner, which has filed with this petition its assignments of error.

Wherefore your petitioner prays that a writ of error to the Supreme Court of the United States be allowed, that citation be granted and signed, that the bond submitted be approved, and that upon compliance with the statutes in such case made and provided said bond and writ of error may operate as a supersedeas.

WILLCOX & WILLCOX,
HENRY E. DAVIS,
Defendant-Petitioner's Attorneys.

Writ of error allowed and supersedeas bond fixed in the sum of four hundred dollars in each case.

Y. J. POPE,
Chief Justice of the Supreme Court of South Carolina.

29 [Endorsed:] R. Keith Charles, Respondent, *vs.* A. C. L. R. Co., Appellant. Petition for Writ of Error.

30 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between R. Keith Charles, plaintiff, and Atlantic Coast Line Railroad Company, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendant, Atlantic Coast Line Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under
31 your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 4th day of October, in the year of our Lord one thousand nine hundred and seven.

[Seal U. S. Circuit Court, District of So. Carolina.]

C. J. MURPHY,
Clerk of the Circuit Court of the United States for the District of South Carolina.

Allowed to operate as a supersedeas:

Y. J. POPE,
Chief Justice of the Supreme Court of South Carolina.

32 [Endorsed:] United States of America. A. C. L. R. R. Co., Plaintiff in Error, *vs.* R. Keith Charles, Defendant in Error. Writ of Error. Original. Service accepted Oct. 8, 1907. George Galletly, Att'y — Defendant in Error.

33 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To R. Keith Charles, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of South Carolina wherein Atlantic Coast Line Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Y. J. Pope, Chief Justice of the Supreme Court of the State of South Carolina, this 4th day of October, in the year of our Lord one thousand nine hundred and seven.

Y. J. POPE,
Chief Justice of the Supreme Court of the State of South Carolina.

34 [Endorsed:] United States of America, *ss.* A. C. L. R. R. Co., Plaintiff in Error, *vs.* R. Keith Charles, Defendant in Error. Citation. Original. Service accepted Oct. 8, 1907. George Galletly, Att'y — defendant in error. Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 9 Oct., 1907. U. R. Brooks, Clerk.

35 Know all men by these presents That, we, Atlantic Coast Line Railroad Company, as principal, and The American Surety Company of New York, as sureties, are held and firmly bound unto R. Keith Charles in the full and just sum of Four Hundred Dollars ($400.00) to be paid to the said R. Keith Charles, his certain attorneys, executors, administrators, heirs or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 7th day of October in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at a term of the Supreme Court of the State of South Carolina in a suit depending in said Court between R. Keith Charles and the Atlantic Coast Line Railroad Company a judgment was rendered against the said Atlantic Coast Line Railroad Company, and the said Atlantic Coast Line Railroad Company having obtained a writ of error and filed a copy thereof in the Clerk's Office

of said Court to reverse the judgment in the aforesaid suit, and a citation directed to R. Keith Charles citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date thereof.

Now, the condition of the above obligation is such, That
36 if the said Atlantic Coast Line Railroad Company shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[SEAL.] ATLANTIC COAST LINE RAILROAD COMPANY,
By J. R. KENLY, *Vice President.*

Attest:
GEO. B. ELLIOTT,
Ass't Secretary.

[SEAL.] AMERICAN SURETY COMPANY OF NEW YORK,
CLAYTON GILES, JR.,
Resident Ass't Sec'y.

Attest:
JOHN D. BELLAMY,
Resident Vice-President.

Approved:
Y. J. POPE,
Chief Justice of the Supreme Court of South Carolina.

[Seal Supreme Court of South Carolina.]

A true copy.
U. R. BROOKS, *Clerk.*

37 [Endorsed:] These two papers go to Washington. Atlantic Coast Line Railroad Company, Plaintiff in Error, *vs.* R. Keith Charles, Defendant in Error. Copy Bond.

38 In the Supreme Court of the United States, October Term, 1907.

ATLANTIC COAST LINE RAILROAD COMPANY, Plaintiff in Error,
against
R. KEITH CHARLES, Defendant in Error.

Assignments of Error.

Now comes the Atlantic Coast Line Railroad Company, Plaintiff in Error, and respectfully represents that it feels aggrieved by the proceedings and judgment of the Supreme Court of the State of

South Carolina in the above entitled cause, and in connection with its petition for writ of error herein makes the following assignments of error, to-wit:

I.

That the said Supreme Court of South Carolina in its final judgment rendered in said cause erred in holding that the Act of the General Assembly of the State of South Carolina, approved the 23d day of February, 1903 (24 Stat. at L., p. 81), entitled "An Act to Regulate the Manner in Which Common Carriers Doing Business in this State Shall Adjust Freight Charges and Claims for Loss of or Damage to Freight," which imposes a penalty of Fifty Dollars for failure to adjust and pay within ninety days after filing a claim for loss of or damage to freight coming from without the State, so far as it affects carriers doing business in the State of South Carolina who fail or refuse to adjust and pay the loss of or damage to
39 goods either proved or *presumed* to have come into their possession, is not an unlawful interference with interstate commerce, even as applied to an interstate shipment; whereas said court should have held that said Act was an illegal regulation of and burden upon interstate commerce in violation of Article I, section 8, clause 3, of the Constitution of the United States.

Wherefore the said Atlantic Coast Line Railroad Company, Plaintiff in Error, prays that the said judgment of the said Supreme Court of the State of South Carolina be reversed, and that the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WILLCOX & WILLCOX,
HENRY E. DAVIS,
Attorneys for Plaintiff in Error.

[Seal Supreme Court of South Carolina.]

A true copy:
U. R. BROOKS, *Clerk.*

40 [Endorsed:] In the Supreme Court of the United States. October Term, 1907. A. C. L. R. R. Co., Plaintiff in Error, against R. Keith Charles, Defendant in Error. Assignments of Error.

41 STATE OF SOUTH CAROLINA:

In the Supreme Court.

I, U. R. Brooks, Clerk of Supreme Court do hereby certify that the foregoing contains the original Writ of Error, the original Citation, the original Assignments of Error copy of Case and Exceptions duly certified, copy of Opinion filed in the case duly certified, copy of bond duly certified in the case of R. Keith Charles against Atlantic Coast Line Railroad Company.

Given under my hand and the Seal of the Court, at Columbia, this 6th day of November A. D. 1907.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

Endorsed on cover: File No. 20,986. South Carolina Supreme Court. Term No. 258. Atlantic Coast Line Railroad Company, plaintiff in error, *vs.* R. Keith Charles. Filed January 25th, 1908. File No. 20,986.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908

No. 61.

ATLANTIC COAST LINE RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

A. VON LEHE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

FILED JANUARY 25, 1908.

(20,987.)

(20,987.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 259.

ATLANTIC COAST LINE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

A. VON LEHE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

INDEX.

	Original.	Print.
Caption	1	1
Case on appeal	1	1
Summons	2	1
Complaint	2	2
Answer	3	2
Testimony of A. von Lehe	4	3
Testimony of H. A. Graham	4	4
Magistrate's judgment and report	5	4
Notice and grounds of appeal	6	5
Judgment of court of common pleas	7	6
Notice of appeal to supreme court	8	7
Exceptions on appeal	8	7
Opinion	9	8
Writ of error	11	9
Citation and service	14	10
Bond on writ of error	16	11
Assignment of errors	19	12
Clerk's certificate	22	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 5, 1909.

1 STATE OF SOUTH CAROLINA:

In the Supreme Court. April Term, 1907.

Appeal from Colleton County. Ninth Circuit.

A. VON LEHE, Plaintiff, Respondent,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, Defendant, Appellant.

J. S. Griffin, Attorney for Plaintiff, Respondent.
W. Huger Fitzsimons, Attorney for Defendant, Appellant.

"Case" for Appeal.

Action for $55.67 commenced in Magistrate's Court before J. E. Bryan, Magistrate, Walterboro, April 9th, 1906.
The following is the summons and Complaint:

STATE OF SOUTH CAROLINA,
County of Colleton:

Magistrate's Summons.

By J. E. Byran, Esq., Magistrate in and for said County of the said State.

2 To any lawful constable:

Complaint having been made unto me by A. von Lehe that *you* The Atlantic Coast Line Rail Road Company is due and owing him the sum of five dollars and sixty-seven cents for one cheese and fifty dollars as a Penalty as per Complaint attached.

These are therefore to require you to summon the said defendant to appear before me, in my office in Walterboro, S. C., on the 28th day of April, A. D. 1906, at 10 o'clock A. M. to answer to the said complaint or judgment will be given against The Atlantic Coast Line Ry. Co. by default.

Given under my hand and seal at Walterboro, S. C., the 7th day of April, A. D. 1906.

J. E. BRYAN, *Magistrate.* [L. S.]

STATE OF SOUTH CAROLINA,
Colleton County:

In Magistrate's Court.

A. VON LEHE, Plaintiff,
vs.
THE ATLANTIC COAST LINE RAILROAD CO., Defendant.

The plaintiff complains of defendant and alleges:

1. That the defendant is a Rail Road Corporation incorporated by and under the Laws of this State.

2. That defendant failed to deliver to plaintiff one cheese shipped to him by Leman Bros. of New York, December 11th, 1905 as freight for transportation.

3. That plaintiff made a claim in writing against defendant for the value of the cheese five dollars and freight paid on same thirty cents and attached the original invoice and freight bill to said claim and delivered the same to defendant's agent on the 2nd of January 1906.

4. That plaintiff claims as a damage the fifty dollars Penalty as fixed by statute for failure to deliver or pay for or refuse to pay for freight so lost within twenty days after claim is made.

Wherefore plaintiff demands judgment against defendants for fifty-five dollars and sixty-seven cents.

A. VON LEHE, *Plaintiff.*

The following is the answer of the defendant:

3 STATE OF SOUTH CAROLINA,
County of Colleton:

In the Magistrate's Court.

A. VON LEHE, Plaintiff,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

The defendant by its attorneys answering the Complaint herein, for answer thereto, says:

First. For a First Defence.

1. It denies each and every allegation in said complaint contained, not hereinafter specifically admitted.

Second. For a Second Defence.

1. Further answering plaintiff's complaint the defendant admits that it failed to deliver to plaintiff the merchandise mentioned in paragraph 2, of the said complaint, but alleges that the reason there-

for was that the same was never delivered to this defendant or any of its agents by its connecting carrier.

Third. For a Third Defence.

1. Further answering plaintiff's complaint the defendant admits that plaintiff filed a claim with defendant for five dollars and sixty-seven (85.67) cents upon the date therein mentioned, but defendant alleges that it is not liable for the penalty sued for, the said goods as appears from plaintiff's complaint having been shipped from without the State and the statute relied upon by plaintiff is in conflict with the interstate commerce law of the United States and is invalid as to such shipments.

2. That the statute providing for the penalty sued for by plaintiff is unconstitutional, null, and void in that it undertakes to interfere with the right of contract in prescribing a penalty for "failure to adjust and pay" within the period named, the said statute undertaking to require payment of all claims whether meritorious or not.

3. That the said act upon which plaintiff's action is based is further invalid and void, it being in direct conflict with the federal law in relation to interstate commerce, it appearing from the
4 face of the complaint that the shipment was made without the State.

April 30th, 1906.

J. E. PEURIFOY,
Defendant's Attorney.

The following is the testimony taken by the Magistrate:

A. VON LEHE, Plaintiff,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

On call of this case the defendant appeared and answered (answer marked Exhibit "A").

A. VON LEHE, sworn, says: "On December 11th, 1905, I had a cheese shipped from New York from Seman Bros., with other goods on or about the 16th day of December 1905. The goods arrived at the depot at Walterboro, S. C. all the goods except the cheese, it was short, the cheese cost five 37 100 dollars, and I paid the freight on the cheese, thirty cents, making a total of (85.67) five dollars and sixty-seven cents. I waited the arrival of the cheese until the 2nd day of January 1906. I then made a claim against the defendant company and gave it to Mr. Morrall, agent for the defendant, at the depot, January 2nd 1906, for five dollars and sixty-seven cents. I then waited for payment on this claim until April 7th, making three months and five days. I then gave the matter to the magistrate to sue April 7th 1906, for 85.67 for the cheese and fifty dollars penalty. This all happened in Colleton County, some 6 or 7 days after I brought this suit, and papers served on the defendant company, the agent, Mr. Morral tendered me five dollars and sixty-seven cents. I

told the agent that the matter was in the hands of the Magistrate and he would have to settle with him.

A. VON LEHE.

Defendant's witness, H. A. GRAHAM, sworn says: "I live in Charleston, S. C., I am local freight agent at Charleston, S. C. for the A. C. L. R. R. Co. On or about December 16th 1905, I handled a consignment of freight consigned A. von Lehe, Walterboro, S. C. The cheese in question checked short with us from the Clyde Line Steamship Co., and has not been delivered to defendant yet here a letter introduced in evidence from A. E. Gaitgares, Ass. Supt. Clyde Line Steamship Co., and marked Exhibit "B." When a loss occurs the connecting line that loses the freight has to pay it. We had not received the cheese from Clyde Line up to the time of the bringing of this suit.

H. A. GRAHAM.

The following is the Magistrate's judgment and report of case:

STATE OF SOUTH CAROLINA.
County of Colleton:

In Magistrate's Court.

A. VON LEHE, Plaintiff,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY.

Magistrate's Report.

To his Honor the Circuit Judge:

I, J. E. Bryan, Magistrate, who tried and determined the above stated case, beg leave to report:

The case came on for trial on the 30th day of April 1906. This was a case brought by plaintiff to recover the price of freight that was lost in transit, and the penalty of $50.00 as fixed by statute. When this case was called for trial, the defendant appeared and answered, as your Honor will see, marked, Exhibit "A." The plaintiff testified that in December 16th 1905 he had some freight shipped to him from New York; that he got from defendant all of the shipment except one cheese which cost him five dollars and thirty-seven cents, and when he received the shipment he paid the defendant thirty cents as freight on the cheese; that on the second day of January 1906 he made a claim against defendants for the cost of the cheese and the thirty cents freight; that he waited for payment or adjustment on this claim until April 7th 1906, then brought this suit; that some 6 or 7 days after this suit was started the agent of defendant tendered the amount sued for, less the cost and penalty and he referred them to the Magistrate for settlement as the matter was then in his hands. H. A. Graham testified as a witness for defendant that the cheese checked short with them from the connecting carrier Decem-

ber 16th, 1905. In answer to the 1st and 2nd Grounds of Appeal, the evidence shows that defendant failed to get the cheese from connecting carrier, but defendant collected the freight on the cheese and had nearly four months to adjust the matter and neglected to do so. In answer to 3rd and 4th Grounds of Appeal, I do not know whether the law as mentioned in the Notice and Grounds of
6 Appeal is unconstitutional or not, but after hearing the evidence on both sides and argument of counsel, and having the Acts of the General Assembly of 1903 page 81, I concluded that I had a just right to find for plaintiff and in view of the facts that defendant had collected freight on goods they did not deliver, and had a long and sufficient time in which to adjust this matter, and in view of the fact that the terminal road or line ought to protect the consignee against loss or damage done to goods or freight while in their care or charge. I entered up judgment against defendant in favor of plaintiff, all of which is respectfully submitted.

J. E. BRYAN, *Magistrate.*

Judgment.

On call of this case the defendants appeared and answered and after hearing the evidence and argument of counsel, I find in favor of the plaintiff for the amount claimed Fifty-Five and 67/100 Dollars for the loss of one cheese and the freight paid on same, and the penalty as fixed by statute and it's the order and judgment of this Court that the plaintiff have judgment against defendant for the amount of Fifty-Five and 67/100 Dollars and costs of this case.

May 1, 1906.

J. E. BRYAN, *Mag.* [L. S.]

From this judgment the following Notice and Grounds of Appeal were served:

STATE OF SOUTH CAROLINA,
County of Colleton:

In Circuit Court.

A. VON LEHE, Plaintiff,
vs.
A. C. L. R. R. Co., Defendant.

Notice and Grounds of Appeal.

To J. E. Bryan, magistrate, and A. von Lehe, plaintiff:

Please take notice that the defendant appeals from the finding and judgment rendered herein by said Magistrate to the Circuit Court for Colleton County upon the following grounds:

1. That the Magistrate erred in finding for the plaintiff, the testimony having shown that the loss did not occur on the line of the defendant.

2. That the magistrate erred in finding for the plaintiff the testimony having shown that the defendant, by the exercise of due diligence, had been unable to trace the line upon which such loss,
7 damage or destruction occurred.

3. That the testimony having shown the shipment sued upon to have been made from without this State, the magistrate erred in finding for the plaintiff, and in not holding and deciding that the statute providing for the penalty sued for as applied to interstate shipments is in conflict with the federal constitution relating to interstate commerce; that such act is an interference with interstate commerce, and is therefore, invalid as to such shipments.

4. That the said magistrate erred in not holding and deciding that the said statute is unconstitutional, null and void, the same being in conflict with Section 5, Article 1, constitution of 1895 *and the Constitution of the United States Article 5 and Section* 8 providing that no person shall be deprived of life, liberty or property without due process of law, the said statute undertaking to require the defendant to "adjust and pay" all claims without regard to their merit and providing a penalty for failure to "adjust and pay" within the time prescribed.

PEURIFOY BROS.,
Defendant's Attorneys.

Walterboro, S. C., October 5, 1906.

The case was heard by his Honor Judge R. O. Purdy who after argument reserved his decision and on February 2, made the following Order:

THE STATE OF SOUTH CAROLINA.
Colleton County:

Court of Common Pleas.

Case No. 1, Calendar 2, No. 67.

A. VON LEHE, Plaintiff,
vs.
ATLANTIC COAST LINE RAILROAD CO.

Case No. 11, Calendar 2, No. 71.

A. VON LEHE, Plaintiff,
vs.
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

These two cases were heard together.

The Appellant contended that Murphy *vs.* Railroad controlled this case, and I was inclined to the opinion that he was right. Since that time the case of Skipper *vs.* Seaboard Air Line Company, 75 S. C., page 276 has been decided. Following the judgment in that

case, the exceptions in these two cases must be overruled and the judgment in each case must be and is hereby affirmed.

R. O. PURDY,
Presiding Judge.

February 2, 1907.

8 Upon this Order judgment was entered for plaintiff and from that judgment the following Notice of Appeal was duly served:

STATE OF SOUTH CAROLINA,
County of Colleton:

Court of Common Pleas.

Case No. 1, Calendar 2, No. 67.

A. VON LEHE, Plaintiff,
vs.
ATLANTIC COAST LINE RAILROAD CO., Defendant.

Notice of Appeal.

To J. S. Griffin, Esq., Plaintiff's attorney:

Please take notice that the defendant appeals and intends to appeal to the Supreme Court from the judgment and order rendered herein by the Circuit Court.

W. H. FITZSIMONS,
JAS. E. PEURIFOY,
Defendant's Attorneys.

Walterboro, S. C., February 22, 1907.

Thereafter the following Exceptions were duly served:

Exceptions.

Defendant excepts to the Order of his Honor Judge Purdy dated February 2, 1907, and to the judgment entered therein in this case for the purpose of appeal upon the following ground.

1. Because the Penalty Act of the Legislature of South Carolina passed on the 23rd day of February, 1903, 24th Stats. S. C., p. 81 is unconstitutional, null and void in so far as it attempts to impose a penalty upon shipments from without this State in that it violates the Commerce Clause of the Constitution of the United States, Art. 1, Sec. 8, and imposes a burden upon and is a regulation of Interstate commerce.

2. Because his Honor the Presiding Judge erred in holding that the decision in the case of Central R. R. of Georgia against Murphy 196 U. S. 194, does not control this case.

3. Because it is respectfully submitted it is error to hold that the case of Skipper *vs.* Seaboard Air Line Railway 75 S. C., 276 is in effect a decision upon the constitutionality of the Penalty Act 24 Stats., S. C., 81 and is authority for the judgment entered up in this case.

[Seal Supreme Court of South Carolina.]

W. HUGHER FITZSIMONS,
Attorney for Defendant, Appellant.

A true copy.
U. R. BROOKS, *Clerk.*

9 STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1907, Ninth Circuit, Colleton County.

A. VON LEHE, Plaintiff-Respondent,
against
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant-Appellant.

Opinion by C. A. Woods, A. J.

This action was brought for five dollars and thirty cents, the value of one cheese with freight paid thereon shipped by Leman Brothers from New York and consigned to the plaintiff at Walterboro S. C. and the statutory penalty of fifty dollars. According to the plaintiff's evidence all the rest of the goods with which the cheese was shipped were safely delivered by the defendant, Atlantic Coast Line Railroad Company, and under the case of Bradley *vs.* R'y Co., Mss. this gave rise to the presumption that the cheese was lost on the defendant's railroad. The defendant's freight agent at Charleston testified, however, the cheese was short when the lot of goods came to the defendant railroad from the Clyde Line Steamship Company. From this testimony the Magistrate found that the cheese never came into the possession of the defendant from the connecting carrier; but he nevertheless held the defendant liable for the value of the cheese, freight and penalty and gave judgment accordingly.

In appealing to the Circuit Court defendant alleged error in holding it liable for goods not lost on its own line when it had made proof of its liability to trace the loss after due diligence. But
10 the appeal to this Court from the decision of the Circuit Court is on the sole ground that the penalty act of February 1903 (24 Stat. 81) is unconstitutional. As that statute has been recently considered and held to be constitutional in Charles *vs.* R. R. Co., Mss. the appeal must fail.

The judgment of this Court is that the judgment of the Circuit Court be affirmed.

A true copy.
U. R. BROOKS, *Clerk.*

[Seal Supreme Court of South Carolina.]

[Endorsed:] Remittitur. No. 89. Von Lehe *v.* A. C. L. R. R. Co.

11 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest Court of law or equity of the said State in which a decision could be had in the said suit between A. von Lehe, plaintiff, and Atlantic Coast Line Railroad Company, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendant, Atlantic Coast Line Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if
12 judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 4th day of October, in the year of our Lord one thousand, nine hundred and seven.

[Seal U. S. Circuit Court, District of So. Carolina.]

C. J. MURPHY,
Clerk of the Circuit Court of the United States for the District of South Carolina.

Allowed to operate as a *supersedeas*;
Y. J. POPE,
Chief Justice of the Supreme Court of South Carolina.

13 [Endorsed:] United States of America: Atlantic Coast Line R. R. Co., Plaintiff in Error, vs. A. von Lehe, Defendant in Error. Writ of Error. Original. 6653.

[Endorsed.]

SOUTH CAROLINA.
County of Colleton:

Personally appeared W. P. Shipley, who made oath that he served the within Writ of Error on J. S. Griffin by delivering to him personally and leaving with him a copy of the same at his office in Walterboro, S. C., on Oct. 12, 1907, that he knows the party so served to be J. S. Griffin, attorney for A. von Lehe, Defendant in Error, and that deponent is not a party to the action.

W. P. SHIPLEY.

Sworn to before me this 12th day of Oct., 1907.

JNO. H. PEURIFOY, [L. S.]
Notary Public, S. C.,

14 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To A. von Lehe, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of South Carolina wherein Atlantic Coast Line Railroad Company is plaintiff in error and you are defendant in error, to show cause if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Y. J. Pope, Chief Justice of the Supreme Court of the State of South Carolina, this 4th day of October in the year of our Lord one thousand nine hundred and seven.

Y. J. POPE,
Chief Justice of the Supreme Court of the State of South Carolina.

15 [Endorsed:] United States of America. Atlantic Coast Line R. R. Co., Plaintiff in Error, *vs.* A. von Lehe, Defendant in Error. Citation. Original. 6653.

[Endorsed.]

STATE OF SOUTH CAROLINA.
County of Colleton:

Personally appeared W. P. Shipley who made oath that he served the within Citation on J. S. Griffin, Esq., by delivering to him personally and leaving with him a copy of the same at his office in Walterboro, S. C., on the 12th day of October, 1907; that he knows the person so served to be J. S. Griffin, attorney for A. von Lehe, Defendant in Error, and that deponent is not a party to the action.

W. P. SHIPLEY.

Sworn to before me this 12th day of Oct., 1907.

JNO. H. PEURIFOY, [L. S.]
Notary Public, S. C.,

16 Know all men by these presents, That we, Atlantic Coast Line Railroad Company, as principal, and the American Surety Company of New York, as sureties, are held and firmly bound unto A. von Lehe in the full and just sum of Four Hundred ($400) Dollars to be paid to the said A. von Lehe, his certain attorneys, executors, administrators, heirs or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 7th day of October in the year of our Lord one thousand nine hundred and seven.

Whereas, lately at a term of the Supreme Court of the State of South Carolina in a suit depending in said Court between A. von Lehe and the Atlantic Coast Line Railroad Company a judgment was rendered against the said Atlantic Coast Line Railroad Company, and the said Atlantic Coast Line Railroad Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of said Court to reverse the judgment in the aforesaid suit, and a citation directed to A. von Lehe citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date thereof.

Now, the condition of the above obligation is such, That
17 if the said Atlantic Coast Line Railroad Company shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[SEAL.] ATLANTIC COAST LINE RAILROAD COMPANY.
By J. R. KENLY, *Vice-President.*

Attest:
GEO. B. ELLIOTT,
Ass't Secretary.

AMERICAN SURETY COMPANY OF NEW YORK.
CLAYTON GILES, JR., *Resident Ass't Sec'ty.*

Attest:
JOHN D. BELLAMY,
Resident Vice-President.

Approved:
Y. J. POPE,
Chief Justice of the Supreme Court of South Carolina.

[Seal Supreme Court of South Carolina.]

A true copy.
U. R. BROOKS, *Clerk.*

18 [Endorsed:] Atlantic Coast Line R. R. Co., Plaintiff in Error, *vs.* A. von Lehe, Defendant in Error. Bond. Copy. #6653.

19 Supreme Court of the United States, October Term, 1907.

ATLANTIC COAST LINE RAILROAD COMPANY, Plaintiff in Error,
against
A. VON LEHE, Defendant in Error.

Assignments of Error.

Now comes the Atlantic Coast Line Railroad Company, Plaintiff in Error, and respectfully represents that it feels aggrieved by the proceedings and judgment of the Supreme Court of the State of South Carolina in the above entitled cause, and in connection with its petition for writ of error herein makes the following assignments of error, to-wit:

I.

That the said Supreme Court of the State of South Carolina in its final judgment rendered in said cause erred in holding that the Act of the General Assembly of South Carolina, approved the 23d day of February, 1903 (24 Stat. at L., p. 81), entitled "An Act to Regulate the Manner in Which Common Carriers Doing Business in this State Shall Adjust Freight Charges and Claims for loss of or Damage to Freight," which imposes a penalty of Fifty dollars for failure to adjust and pay within ninety days after filing a claim for loss of or damage to freight coming from without the State, so far as it affects carriers doing business in the State of South Carolina who fail or refuse to adjust and pay the loss of or damage to goods either proved or *presumed* to have come into their posses-
20 sion, is not an unlawful interference with interstate commerce, even as applied to an interstate shipment; whereas said court should have held that said Act was an illegal regulation of and burden upon interstate commerce in violation of Article I., sec. 8, clause 3, of the Constitution of the United States.

Wherefore the said Atlantic Coast Line Railroad Company, Plaintiff in Error, prays that said judgment of the Supreme Court of the State of South Carolina be reversed, and that the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WILLCOX & WILLCOX,
W. H. FITZSIMMONS,
HENRY E. DAVIS,
Attorneys for Plaintiff in Error.

21 [Endorsed:] Supreme Court of the United States, October Term, 1907. Atlantic Coast Line R. R. Co., Plaintiff in Error, *vs.* A. von Lehe, Defendant in Error. Assignments of Error.

22 STATE OF SOUTH CAROLINA:

In the Supreme Court.

I, U. R. Brooks, Clerk of Supreme Court do hereby certify that the foregoing contains the original Writ of Error, the original Citation, the original Assignments of Error, copy of Case and Exceptions duly certified, copy of Opinion filed in the case duly certified, copy of Bond duly certified in the case of A. von Lehe against Atlantic Coast Line Railroad Company, No. 6653.

Given under my hand and the Seal of the Court, at Columbia, this 6. day of November, A. D. 1907.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

Endorsed on cover: File No. 20,987. South Carolina Supreme Court. Term No. 259. Atlantic Coast Line Railroad Company, plaintiff in error, *vs.* A. von Lehe. Filed January 25th, 1908. File No. 20,987.